IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05/07/2002

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THE HONOURABLE MR. JUSTICE P. SHANMUGAM

Civil Revision No.2998 of 2001 and Civil Revision No.2999 of 2001
and
C.M.P. Nos.15928, 15929 of 2001 and 7512 of 2002

M. Perumal Pallavarayar .. Petitioner

vs.

S. Balasubramanian .. Respondent

PRAYER : C.R.P. No.2998 of 2001 against the order of the Rent Control Appellate Authority (II Additional Sub-Judge), Tirunelveli dated 26.7.2001 made in R.C.A. No.47 of 1998, confirming the fair and decretal order of the Principal Rent Controller (Principal District Munsif), Tirunelveli dated 5.10.1998 in H.R.C.O.P. No.85 of 1996.

C.R.P. No.2999 of 2001 against the order of the Rent Control Appellate Authority (II Additional Sub-Judge), Tirunelveli dated 26.7.2001 made in R.C.A. No.56 of 1998, confirming the fair and decretal order of the Principal Rent Controller (Principal District Munsif), Tirunelveli dated 5.10.1998 in R.C.O.P. No.83 of 1995.

!For Petitioner : Mr. P. Peppin Fernando

^For Respondent : Ms. N. Krishnaveni

:O R D E R

The tenant/respondent before the Rent Controller and appelland before the Appellate Authority under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 is the revision petitioner in both these revisions.

2. The landlord/respondent filed a petition under Section 10(2)(1) and 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as 'the Act') for eviction of the tenant on the ground of willful default and for his own use.

3.The tenant has filed an application under Section 8(5) of the Act for a direction to deposit the rent before the Rent Controller.

4. The Rent Controller allowed the application for eviction on the ground of own use while disallowing the claim of willful default and also rejected the application filed by the tenant to deposit the rent before the Rent Controller.

5. The tenant filed two appeals and both the appeals were dismissed by the appellate authority. The revisions are against these orders.

6. The brief facts of the case are as follows :
The property in question was purchased in the name of the landlord in the year 1976. The respondent, along with three brothers and his father, are doing wholesale business in asafoetida, camphor and frankincense in the name and style of 'L.G. Perungayam' and 'Roja Mark Camphor' for the past twenty years. They have developed the business and expanded it throughout Tamil Nadu. The respondent's father died in the year 1982. The building was rented out to the tenant on 1.7.1979 for a monthly rent of Rs.300/- initially. As the respondent's brothers are continuing the business at Door Nos.7 and 8 of Thamizh Sangam Street, Tirunelveli, the respondent wanted to do the same business on his own separately in the demised premises and he requested the tenant to vacate the premises in the year 1994 orally and in writing in the year 1995. As the tenant was evading to vacate the premises and as the landlord has no other building of his own to do the said business, he filed the above petition for eviction for own use. It was contended that the tenant had not paid the rent for August and September 1995 and therefore, he was liable to be evicted on the ground of willful default also.

7. The tenant opposed the application denying the allegation of willful default in payment of rent and seeking for deposit of rent on the ground that the landlord refused to receive the rent. It was contended that the landlord has other buildings and shops and therefore, there was no bonafide requirement.

8. The Rent Controller found that the landlord was doing the wholesale business with his three brothers for the past twenty years and that he has got sufficient experience and that his intention was to start an independent business in the premises allotted to him and that it is a bonafide requirement and also found that the need is bonafide, just and necessary. However, it was found that there was no willful default and that there is no need to order deposit of rent.

9. On appeal, the order of eviction was confirmed by the appellate authority and the appeal against the order rejecting the application on willful default was dismissed.

10. Learned counsel Mr. P. Peppin Fernando appearing on behalf of the petitioner/tenant made arguments extensively, inter alia, contending that there is no evidence to substantiate the claim for own use and that a mere intention to commence business is not sufficient. In support of his contention, he referred to a number of authorities. There was no serious argument as to the order dismissing the application for deposit of rent.

11. Learned counsel Ms. N. Krishnaveni appearing on behalf of the respondent/landlord submits that there is no dispute that the respondent is having sufficient experience in the partnership business of asafoetida, camphor and frankincense. It is also not in dispute that initially, the respondent, along with his father and brothers, commenced the business and was running the same for the past twenty years and that two of the brothers are still continuing the same business in the same town. According to her, the property now in question has been purchased in the name of the respondent and he wants to do a separate business on his own and he has no other building to do the business in the town and therefore, she submits that the respondent has made out a case for his own requirement of the building and both the courts below, as a matter of fact, have upheld the claim of the respondent and found that the requirement for own use is just and bonafide. She further submits that there is no illegality or impropriety in the decision passed by the authorities under the Act so as to call for any interference in revision.

12. I have heard the counsel and considered the matter carefully.

13. The facts that the property in question was purchased in the year 1976 and was rented out to the tenant in the year 1979 and that he had been paying the rent to the respondent as a tenant are not in dispute. In the evidence of P.W.1, the respondent herein, it is stated that the respondent, along with his brothers, are running a joint family business at Door Nos.7 and 8 of Thamizh Sangam Street, Tirunelveli; that the respondent is living at Door No.9 of the same street; that all his three other brothers are living at Door Nos.10, 11 and 12 respectively in the same street; that the joint family business is managed by his eldest brother; and that the demised building was purchased in the name of the respondent and he had been independently collecting the rent and maintaining the account in respect of the said building. There is no dispute of the fact that the respondent is the landlord for the demised building. The further fact that the business at Door Nos.7 and 8 of Thamizh Sangam Street, Tirunelveli is run by the joint family for the past twenty years is also not in dispute. The respondent wanted to do the same business separately and independently and therefore, he requested the tenant to vacate the premises orally and thereafter by lawyer's notice.

14. The case of the tenant is that the petition for eviction has been made only because he had refused to concede to the demand of the landlord for enhanced rent. He has accepted, as D.W.1, that the respondent and his brothers are continuing as joint family and that they are seeking for the eviction only for the purpose of getting more rent. It is further pleaded that inasmuch as the respondent is already doing a business, the requirement for own use is not true. From the evidence of D.W.1, it is clear that his main plea was that the petition for eviction is only for the enhancement of rent.

15. In the light of the argument advanced before the court that there was no evidence to commence the business of their own, the courts below found that the fact that the respondent is running a joint family business in asafoetida, camphor and frankincense shows that he has got sufficient experience and knowledge to run the same business separately and that

therefore, the landlord has got sufficient capacity and means and also that the requirement of own use is, therefore, true and bonafide. The appellate court found that the running of partnership business along with the other members of the family has not been denied in the counter and the case of the landlord is that since he is already running the business, there is no need to establish the bonafide requirement for stating a separate business.

16. The argument of the learned counsel for the petitioner is that there must be independent and sufficient evidence to show that the landlord is starting a business of his own and it is only at the stage of intention and therefore, the petition ought to have been dismissed. Section 10(3) of the Act says that the landlord ca apply for an order directing the tenant to put the landlord in possession of the building in case of a non-residential building if the landlord is not occupying, for the purpose of business, a non-residential building in the city, which is his own. Therefore, the requirement is that the landlord should not have a building of his own for the purpose of a business in the same city. From the evidence, it is clear that the respondent is running the business in asafoetida, camphor and frankincense which is a joint family business and the premises in which the said business is run is not his own. Therefore, though he has got a business as a partner, if he does not have his own building to run the said business, he is entitled to seek for eviction.

17. In SHANMUGHASUNDARAM VS. SUBBURAYA CHETTIAR [1999 (3) M.L.J. 293 , a learned judge of this court has taken the view that in appropriate cases, the court may presume that the landlord's requirement is bonafide. The expression 'carrying on business' consists of a series of steps. Possession of funds, taking license are all such steps for the purpose of carrying on the business. In S. DEVAN VS. N. PALANIAPPAN [1996 (2) L.W. 555], it was held by this court that when a joint family is carrying on a business and when the father wants to settle his son separately, it cannot be said that the landlord is not carrying on the business, and the father's intention to settle the son separately cannot but be a bonafide one. In A.M. STEEL TRADERS VS. S.M. M. MOHAMMED FATHIMATHU ZOHRA [1998 (3) L.W. 704], it was held by this court that the children of the landlord, for whom the building in that case was sought, were not doing any other business except the one mentioned in the petition which is a partnership business and for that business, they were seeking the premises in question and therefore, it was held that they are not having any other premises of their own. In THIRUNAVUKKARASU VS. VASANTHA AMMAL [1997 (2) L.W. 607], it was held that the factum of bonafide need can b e proved in any manner known to law. The finding on a question of fact cannot be re-appraised by a revisional court. In C. KEVAL CHAND VS. KARUPPANNA MUDALIAR [19 97 (1) L.W. 335], this court held that the landlord residing and doing business in a building which belongs to an undivided joint family will not disentitle him from seeking eviction in his own building. When a partnership business was carried on by the landlord, the right to secure eviction on the ground of requirement for his own business was upheld in A. GOPALAKRISHNA CHETTIAR VS. T.K.A. YAKUB HUSSAIN [1997 L.W. 232]. It was held in that case that the fact that the landlord has been carrying on business in a premises belonging to a joint family, of which he is a member, does not disentitle him from getting his own building for the purpose of the

business which he is admittedly carrying on. In S.N.K. RAMASAMY PILLAI VS. KARMEGA THEVAR [1964 (2) M.L.J. 89], while construing Section 10(3)(a)(iii) of the Act, a learned judge of this court held that Section 10(3)(a)(iii) of the Act would cover the case where a landlord is having the capital ready and the intention as well to do business and he can be said to have commenced his business, though the activity related to it has to await the securing of accommodation. The contention of the tenant in that case that the section contemplates a person carrying business comprising an integrated activity of purchase and sale of commodities and where there is nothing more than a mere intention to start business, he could not be said to be carrying on business was rejected. According to the learned judge, it is not necessary for the purpose of ' carrying on business', within the meaning of that Sub-section, that the entire activity of business should exist. If that be so, then no landlord, who is not already having a business, would ever recover the property for his own business which he wants to start. The learned judge observed as follows :

"A more sensible interpretation of that section will be that, if at least a part of the business has been commenced, the landlord should be deemed to have commenced the business, although the further conduct of it would depend upon his being able to secure his building for it."

18. In the light of the above rulings, the fact that the respondent/landlord is doing a business in asafoetida, camphor and frankincense for the past twenty years as a member of the joint family and therefore, he has got sufficient means and experience cannot be doubted. The intention of the landlord to have an independent and separate business on the same lines is set out in the oral evidence of the landlord. Apart from the clear intention stated above, the further insistence of obtaining a separate R.C. etc. should not be made as a sinequa-non for the purpose of proving the bonafide requirement. In the facts and circumstances of the case, it is clear that the respondent's requirement to commence his own separate business of the existing business cannot be doubted as not bonafide.

19. Counsel for the petitioner referred to the decision reported in T. SIVASUBRAMANIAM VS. KASINATH PUJARI [2000 (1) L.W. 778] in support of his contention that the mere wish that the son desires to live independently and separately from his father will not constitute the need or requirement and that he must establish that the need is bonafide, just, honest and conceived in good faith. Since there was no pleading, the requirement was held to be not made out. In T.V. JAGATRAKSHAGAN VS. N. FUTAREE BAI [19099 (III) M.L.J. 303], a learned judge of this court has held that the mere desire to carry on business would not enable the landlord to resort to Section 10(3)(a)(iii) of the Act. Certain business may need elaborate preparation and certain business may not require any preparation. In G. NAGARATHNAM VS. DISTRICT LIBRARY OFFICER [1986 (I) M.L.J. 327], it was held that when the landlord was yet to commence the nursery school and on a mere publication of a pamphlet, it cannot be held that there is an intention to start such a school and there is no tangible and concrete evidence to prove the commencement of a school. In M/S. VELMURUGAN ENGINEERS VS. A. KALIAPPAN [1998 (II) M.L.J. 472], it was held by this court that the requirement of Section 10(3)(a)(iii)

of the Act is satisfied if the landlord shows that he had taken some concrete steps towards the commencement of the business. In that case, it was held that the landlord was carrying on the business; besides, he had made arrangements to start a business. In KANAKAVEL PILAI VS. DRUGS AND CHEMICALS [1980 M. L.J. 392], it was held that considering the nature of business, there must be some arrangements made for the commencement of the business and the range of activities necessary for the commencement of such business is not so simple and easy as starting and running a petty shop. Having regard to the nature of the industry proposed, it was held that the matter of carrying on such a business is only at the stage of intention and therefore not coming within the scope of the expression 'carrying on business', A Division Bench of this court, in P.N. RAJU CHETTIAR VS. THE STATE OF TAMIL NADU [1970 (I) M.L.J. 249], has held that short of any tangible, concrete indication of commencement of a business, mere intention to carry on business will not enable the landlord to resort to Section 10(3)(a)(iii) of the Act. The Division Bench held that 'carrying on business' may consist of a series of steps and even if one step is proved, the requirement is satisfied. But, in that case, there was no step at all and the matter was only at the stage of intention.

20. Considering the interpretation placed on the provision, it is clear that the landlord is not only having an intention, but he is actually carrying on the business, hich is a joint family business of the same nature and therefore, once the building is made available, it can be used for his own, independent business. The case of a landlord who is yet to commence the business will not apply to the respondent in this case, as he is already a partner in a joint family business and carrying on the said business with the knowledge, funds and having no other non-residential building for the said purpose, he requires it for his own, separate business and hence, it has to be held that the requirement is satisfied. Therefore, on facts and in the circumstances, the citations referred to by the counsel for the respondent will be of no assistance to him.

21. In the above circumtances, no grounds are made out to interfere with the concurrent findings of the court below and there is no illegality or impropriety in the orders of the courts below. The petitioner has not established that the landlord has refused to receive the rent and the finding of the court below that there is no need to pass an order of deposit of rent has to upheld. Hence, both the revisions are liable to be dismissed and are accordingly dismissed. No costs. Consequently, the connected C.M.Ps. are closed.

Index : Yes 5th July, 2002.
Internet : Yes

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To

1. The Rent Control Appellate Authority
(II Additional Sub-Judge),

Tirunelveli.

2. The Principal Rent Controller
(Principal District Munsif),
Tirunelveli.

3. The Record Keeper,
V.R. Section,
High Court,
Chennai.
P. SHANMUGAM, J.

Order in
C.R.P. Nos.2998 and 2999 of 2001